

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Dominique Osborne, et al.,)	Case No. CV 10-2465-JFW (CWx)
)	
Plaintiff,)	SCHEDULING AND CASE MANAGEMENT
v.)	ORDER
)	
The Prudential Insurance)	SEE LAST PAGE FOR TRIAL AND
Company of America,)	PRE-TRIAL DATES
)	
Defendants.)	

The purpose of this Order is to enable the parties and their counsel to know well in advance the schedule that will govern this action. SEE THE LAST PAGE OF THIS ORDER FOR THE SPECIFIED DATES. Ordinarily, the dates set forth on the last page are determined after consultation with the parties at the Fed.R.Civ.P. 16(b) Scheduling Conference and this Order is distributed to them at that time. Accordingly, the dates and requirements are firm. The Court is very unlikely to grant continuances, even if stipulated by the parties, unless the parties establish good cause through a concrete showing. **Because this Order in some respects modifies the applicable Local Rules, counsel are advised to read it carefully to**

1 avoid default on the obligations established herein. Counsel
2 are advised to pay particular attention to the requirements
3 of the Court with respect to electronic filing, the filing of
4 motions for summary judgment, and the documents to be
5 submitted at the Pre-Trial Conference and Trial.

6 IT IS HEREBY ORDERED:

7 **1. ELECTRONIC FILING AND COURTESY COPIES**

8 All documents that are required to be filed in an
9 electronic format pursuant to General Order No. 08-02 shall
10 be filed electronically no later than 4:00 p.m. on the date
11 due unless otherwise ordered by the Court. Any documents
12 filed electronically after 4:00 p.m. on the date due will be
13 considered late and may be stricken by the Court. Any
14 documents that counsel attempt to file electronically which
15 are improperly filed will not be accepted by the Court.

16 Counsel are ORDERED to deliver 2 courtesy copies of all
17 documents filed electronically to Chambers. For each
18 document filed electronically, one courtesy copy shall be
19 marked "CHAMBERS COPY" and the other shall be marked
20 "COURTESY COPY." On the first page of each courtesy copy, in
21 the space between lines 1 - 7 to the right of the center,
22 counsel shall include the date the document was e-filed and
23 the document number. The courtesy copies shall be delivered
24 to Chambers no later than 10:00 a.m. on the next business day
25 after the document was electronically filed. All documents
26 must be stapled or bound by a two prong fastener, and all
27 Exhibits to Declarations or Request for Judicial Notice must
28 be tabbed. The "COURTESY COPY" of all Motions must be three-

1 hole punched at the left margin with oversized 13/22" hole
2 size, not the standard 9/32" hole size.

3 For any document that is not required to be filed
4 electronically, counsel are ORDERED to deliver 1 conformed
5 courtesy copy of the document to Chambers at the time of
6 filing.

7 When a proposed order accompanies an electronic filing, a
8 WordPerfect or Word copy of the proposed order, along with a
9 copy of the PDF electronically filed main document, shall be
10 e-mailed to JFW_Chambers@cacd.uscourts.gov. The subject line
11 of the e-mail shall be in the following format: court's
12 divisional office, year, case type, case number, document
13 control number assigned to the main document at the time of
14 filing, judge's initials and filer (party) name. Failure to
15 comply with this requirement may result in the denial or
16 striking of the request or the Court may withhold ruling on
17 the request until the Court receives the required documents.

18 **2. DISCOVERY**

19 All discovery shall be completed by the discovery cut-off
20 date specified on the last page of this Order. **THIS IS NOT**
21 **THE DATE BY WHICH DISCOVERY REQUESTS MUST BE SERVED; IT IS**
22 **THE DATE BY WHICH ALL DISCOVERY, INCLUDING EXPERT DISCOVERY,**
23 **IS TO BE COMPLETED.** The Court does not enforce side deals to
24 conduct discovery beyond the discovery cut-off date.

25 Any motion challenging the adequacy of responses to
26 discovery must be heard sufficiently in advance of the
27 discovery cut-off date to permit the responses to be obtained
28 before that date if the motion is granted.

1 In an effort to provide further guidance to the parties,
2 the Court notes the following:

3 **(a) Depositions**

4 All depositions shall be scheduled to commence
5 sufficiently in advance of the discovery cut-off date to
6 permit their completion and to permit the deposing party
7 enough time to bring any discovery motions concerning the
8 deposition prior to the cut-off date.

9 **(b) Written Discovery**

10 All interrogatories, requests for production of
11 documents, and requests for admissions shall be served
12 sufficiently in advance of the discovery cut-off date to
13 permit the discovering party enough time to challenge (via
14 motion practice) responses deemed to be deficient.

15 **(c) Discovery Motions**

16 Whenever possible, the Court expects the parties to
17 resolve discovery issues among themselves in a courteous,
18 reasonable, and professional manner. If they do so, resort
19 to the Court for guidance in discovery is seldom necessary.
20 The Magistrate Judge assigned to this case will rule on
21 discovery motions.

22 **(d) Expert Discovery**

23 If expert witnesses are to be called at trial, the
24 parties shall designate affirmative experts to be called at
25 trial and shall provide reports required by Fed.R.Civ.P.
26 26(a)(2)(B) not later than eight weeks prior to the discovery
27 cut-off date. Rebuttal expert witnesses shall be designated
28 and reports provided as required by Fed.R.Civ.P. 26(a)(2)(B)

1 not later than five weeks prior to the discovery cut-off
2 date. Any non-retained expert designated by a party as an
3 affirmative or rebuttal expert shall also prepare and provide
4 an expert report in the form described by Fed.R.Civ.P.
5 26(a)(2)(B). Expert witnesses will be bound by the opinions
6 expressed in their reports prepared in accordance with
7 Fed.R.Civ.P. 26(a)(2)(B) and will not be permitted to offer
8 new opinions at trial. Failure to timely comply with this
9 deadline will result in the expert being excluded at trial as
10 a witness.

11 **3. MOTIONS - GENERAL PROVISIONS**

12 All law and motion matters, except for motions in limine,
13 must be set for hearing (not filing) by the motion cut-off
14 date specified on the last page of this Order. The Court
15 will deny or strike late-filed motions. Once a party has
16 noticed a motion for hearing on a particular date, the
17 hearing shall not be continued without leave of Court. If
18 the Court concludes that a motion can be resolved without
19 argument, the Court will notify the parties in advance.

20 The parties must adhere to the requirements of the Local
21 Rules. If any party does not oppose a motion, that party
22 shall submit a written statement that it does not oppose the
23 motion in accordance with the Local Rules. The parties
24 should note that failure to meet the time limits for filing
25 an opposition set forth in the Local Rules shall be deemed
26 consent to the granting of the motion.

27 The title page of all motions must state the Pre-Trial
28 Conference date and the Trial date. Issues left undetermined

1 after the passage of the motion cut-off date should be listed
2 as issues for trial in the Pre-Trial Conference Order. As an
3 exception to the above, motions in limine dealing with
4 evidentiary matters may be heard pursuant to the schedule
5 specified on the last page of this Order; however, the Court
6 will not hear or resolve summary judgment motions disguised
7 as motions in limine.

8 Ex parte practice is strongly discouraged. *See Mission*
9 *Power Eng'g Co. v. Continental Cas. Co.*, 883 F. Supp. 488
10 (C.D. Cal. 1995). The Court will require strict adherence to
11 proper ex parte procedures for any ex parte application filed
12 with the Court. *Id.* at 492; see also Local Rules.

13 **(a) Applications and Stipulations to Extend Time**

14 No applications or stipulations extending the time to
15 file any required document or to continue any date are
16 effective until and unless the Court approves them.
17 Applications and/or stipulations to extend the time to file
18 any required document or to continue any hearing, Pre-Trial
19 date, or the Trial date must set forth the following:

20 (i) the existing due date or hearing date, as well
21 as all dates currently set by the Court in this Order,
22 including the discovery cut-off date, the Pre-Trial
23 Conference date, and the Trial date;

24 (ii) the new dates proposed by the parties;

25 (iii) specific, concrete reasons supporting good
26 cause for granting the extension; and

27 / / /

28 / / /

1 (iv) whether there have been prior requests for
2 extensions by any party, and whether those requests were
3 granted or denied by the Court.

4 All applications and stipulations must be accompanied by
5 a separate and independent proposed order which must be
6 submitted to the Court in accordance with General Order 08-
7 02. Failure to submit a separate proposed order may result
8 in the denial of the application or stipulation or the Court
9 may withhold ruling on the application or stipulation until
10 the Court receives a separate proposed order.

11 **(b) Joinder of Parties and Amendment of Pleadings**

12 The deadline for joining parties and amending pleadings
13 is sixty days from the date of this Order. Any motions to
14 join other parties or for leave to amend the pleadings shall
15 be filed within twenty days of the date of this Order so that
16 they can be heard and decided prior to the deadline.

17 In addition to the requirements of the Local Rules, all
18 motions to amend the pleadings shall: (1) state the effect of
19 the amendment; (2) be serially numbered to differentiate the
20 amendment from previous amendments; and (3) state the page,
21 line number(s), and wording of any proposed change or
22 addition of material. The parties shall deliver to Chambers
23 a redlined version of the proposed amended pleading
24 indicating all additions and/or deletions of material.

25 **(c) Withdrawal or Substitution of Counsel**

26 The Court will not grant a request for approval of
27 substitution of counsel after an action has been set for
28 trial unless: (1) counsel files the request using the most

1 recent version of the appropriate forms provided on the
2 Court's website; and (2) the request is accompanied by a
3 declaration signed by a substituting attorney indicating that
4 such attorney has been advised of the trial date and will be
5 prepared to proceed with trial as scheduled. Any request for
6 substitution of counsel which is not on the proper form or is
7 not accompanied by a declaration signed by a substituting
8 attorney as set forth above will be denied.

9 Counsel who wish to withdraw and substitute their client
10 *pro se* must file a regularly noticed motion to withdraw which
11 demonstrates good cause for the request to withdraw. The
12 Court will not consider such a motion unless: (1) the motion
13 is accompanied by a declaration signed by the client
14 indicating that the client consents to the withdrawal, has
15 been advised of the time and date of trial, and will be
16 prepared to represent themselves *pro se* on the scheduled
17 trial date; or (2) the Court is otherwise satisfied for good
18 cause shown that the attorney should be permitted to
19 withdraw.

20 **4. SUMMARY JUDGMENT MOTIONS**

21 The Court will only entertain ONE summary judgment motion
22 by a party. In the event a party believes that more than one
23 summary judgment motion is necessary to expedite the
24 resolution of issues in the action, the party must obtain
25 leave of court to file more than one summary judgment motion.
26 The Court will require strict adherence to the following
27 requirements:

(a) Statement Of Uncontroverted Facts and Conclusions of
Law and Statement of Genuine Issues of Material Fact

The Statement of Uncontroverted Facts and Conclusions of Law is to be prepared in a two column format. The left hand column should set forth the allegedly undisputed fact or conclusion or law. The right hand column should set forth the evidence that supports the factual statement or conclusion of law. The factual statements and conclusions of law should be set forth in sequentially numbered paragraphs. Each paragraph should contain a narrowly focused statement of fact or conclusion of law. Each numbered paragraph should address a single subject in as concise a manner as possible.

The opposing party's Statement of Genuine Issues of Material Fact must track the movant's Statement of Uncontroverted Facts exactly as prepared. The document must be in two columns; the left hand column must restate the allegedly undisputed fact, and the right hand column must indicate either undisputed or disputed. The opposing party may dispute all or only a portion of the statement, but if disputing only a portion, must clearly indicate what part is being disputed. Where the opposing party is disputing the fact in whole or part, the opposing party must, in the right hand column, label and restate the moving party's evidence in support of the fact, followed by the opposing party's evidence controverting the fact. Where the opposing party is disputing the fact on the basis of an evidentiary objection, the party must cite to the evidence alleged to be objectionable and state the ground of the objection and

1 nothing more. **No argument should be set forth in this**
2 **document.**

3 The opposing party may submit additional material facts
4 that bear on or relate to the issues raised by the movant,
5 which shall follow the format described above for the moving
6 party's Separate Statement. These additional facts shall
7 follow the movant's facts, shall continue in sequentially
8 numbered paragraphs (*i.e.*, if movant's last statement of fact
9 was set forth in paragraph 30, then the first new fact will
10 be set forth in paragraph 31), and shall set forth in the
11 right hand column the evidence that supports that statement.

12 The moving party, in its reply, shall (1) restate the
13 entirety of the opposing party's Statement of Genuine Issues
14 of Material Fact and (2) respond to the additional facts in
15 the same manner and format that the opposing party is
16 required to adhere to in responding to the Statement of
17 Uncontroverted Facts, as described above.

18 **(b) Supporting Evidence**

19 No party should submit any evidence other than the
20 specific items of evidence or testimony necessary to support
21 or controvert a proposed statement of undisputed fact. Thus,
22 for example, entire sets of interrogatory responses, or
23 documents that do not specifically support or controvert
24 material in the Statements should not be submitted in support
25 of or in opposition to a motion for summary judgment. Any
26 such material will not be considered.

27 Evidence submitted in support of or in opposition to a
28 motion for summary judgment should be submitted either by way

1 of stipulation or as exhibits to declarations sufficient to
2 authenticate the proffered evidence, and should not be
3 attached to the memorandum of points and authorities. The
4 Court will accept counsel's authentication of deposition
5 transcripts, written discovery responses, and the receipt of
6 documents in discovery if the fact that the document was in
7 the opponent's possession is of independent significance.

8 Documentary evidence as to which there is no stipulation
9 regarding foundation must be accompanied by the testimony,
10 either by declaration or properly authenticated deposition
11 transcript, of a witness who can establish its authenticity.

12 If a party wishes to offer deposition testimony in
13 support of or in opposition to a motion for summary judgment,
14 that party shall provide the Court with one courtesy copy of
15 the entire transcript (single-sided mini transcript) of each
16 deposition referenced. The party shall also prepare and file
17 a separate document for each deponent which contains only
18 those questions and answers, and any objections made at the
19 time of the deposition to those questions, that a party is
20 relying on to support their motion, with a citation to the
21 appropriate page and line number(s) in the deposition
22 transcript.

23 The Court's courtesy copies of all evidence in support of
24 or in opposition to a motion for summary judgment shall be
25 submitted in a separately bound volume and shall include a
26 Table of Contents. If the supporting evidence exceeds fifty
27 pages, each courtesy copy of the supporting evidence shall be
28 placed in a slant D-ring binder with each item of evidence

1 separated by a tab divider on the right side. All documents
2 contained in the binder must be three hole punched with the
3 oversized 13/32" hole size, not the standard 9/32" hole size.

4 In addition to the foregoing, the parties shall meet and
5 confer and prepare a binder containing a joint set of all
6 exhibits relied on by the parties in support of and in
7 opposition to the motion for summary judgment. The parties
8 shall also prepare a table of contents for the exhibit binder
9 which specifically describes each exhibit (e.g. Plaintiff's
10 Exhibit 1 - Letter from John Doe to Jane Doe dated January 1,
11 2007 Re: Reasons for Jane Doe's termination). The parties
12 shall not file but shall submit the exhibit binder as a
13 courtesy copy to the Court in conjunction with the filing of
14 the Reply.

15 **(c) Objections to Evidence**

16 If a party disputes a fact based in whole or in part on
17 an evidentiary objection, the ground for the objection, as
18 indicated above, should be stated in the Separate Statement
19 but not argued in that document. Evidentiary objections are
20 to be addressed in a separate memorandum to be filed with the
21 opposition or reply brief of the party. This memorandum
22 should be organized **to track the paragraph numbers of the**
23 **Separate Statement in sequence**. It should identify the
24 specific item of evidence to which objection is made, or in
25 the case of deposition testimony it should quote the relevant
26 testimony, the ground for the objection, and a very brief
27 argument with citation to authority as to why the objection
28

1 is well taken. The following is an example of the format
2 contemplated by the Court:

3 Separate Statement Paragraph 1: Objection to the
4 supporting deposition testimony of Jane Smith [quote
5 testimony] at 60:1-10 on the grounds that the statement
6 constitutes inadmissible hearsay and no exception is
7 applicable. To the extent it is offered to prove her
8 state of mind, it is irrelevant since her state of mind
9 is not in issue. Fed. R. Evid. 801, 802.

10 **DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE**
11 **OPPONENT'S STATEMENTS OF UNDISPUTED FACT. THESE WILL BE**
12 **DISREGARDED AND OVERRULED.**

13 **(d) The Memorandum of Points and Authorities**

14 The movant's memorandum of points and authorities should
15 be in the usual form required under Local Rules and should
16 contain a narrative statement of facts as to those aspects of
17 the case that are before the Court. All facts should be
18 supported with citations to the paragraph number in the
19 Separate Statement that supports the factual assertion and
20 not to the underlying evidence.

21 Unless the case involves some unusual twist, the motion
22 need only contain a brief statement of the Fed.R.Civ.P. 56
23 standard; the Court is familiar with the Rule and with its
24 interpretation under *Celotex* and its progeny. If at all
25 possible, the argument should be organized to focus on the
26 pertinent elements of the claim(s) for relief or defense(s)
27 in issue, with the purpose of showing the existence or non-

28

1 existence of a genuine issue of material fact for trial on
2 that element of the claim or defense.

3 Likewise, the opposition memorandum of points and
4 authorities should be in the usual form required by the Local
5 Rules. Where the opposition memorandum sets forth facts, the
6 memorandum should cite to paragraphs in the Separate
7 Statement if they are not in dispute, to the evidence that
8 contravenes the fact where the fact is in dispute, or, if the
9 fact is contravened by an additional fact in the Statement of
10 Genuine Issues of Material Fact, the citation should be to
11 such fact by paragraph number.

12 **(e) Proposed Statement of Decision**

13 Each party shall prepare a Proposed Statement of
14 Decision, which shall contain a statement of the relevant
15 facts and applicable law with citations to case law and the
16 record. The Proposed Statement of Decision shall not exceed
17 five pages and shall be in a form that would be appropriate
18 for the Court to enter as its final order on the motion. The
19 Proposed Statement of Decision shall be submitted to the
20 Court in accordance with General Order 08-02.

21 **(f) Timing**

22 Parties need not wait until the motion cut-off date to
23 bring motions for summary judgment or partial summary
24 judgment. Early completion of non-expert discovery and
25 filing of motions for summary judgment may eliminate or
26 reduce the need for expensive expert depositions which are
27 normally conducted in the last stages of discovery.

28

1 **Caveat: Failure to respond to a Motion for Summary**
2 **Judgment or Partial Summary Judgment ("Motion") will be**
3 **deemed by the Court as consent to the granting of the Motion.**

4 **5. MOTIONS IN LIMINE**

5 The Court will only entertain a maximum of five motions
6 in limine by a party. In the event a party believes that
7 more than five motions in limine are necessary, the party
8 must obtain leave of Court to file more than five motions in
9 limine. No application to file under seal will be granted
10 with respect to a motion in limine or any documents submitted
11 with the motion in limine.

12 Before filing any motion in limine, counsel for the
13 parties shall confer in a good faith effort to eliminate the
14 necessity for hearing the motion in limine or to eliminate as
15 many of the disputes as possible. It shall be the
16 responsibility of counsel for the moving party to arrange for
17 this conference. The conference shall take place in person
18 within ten calendar days of service upon opposing counsel of
19 a letter requesting such conference, but in no event later
20 than twenty-one days before the Pre-Trial Conference. Unless
21 counsel agree otherwise, the conference shall take place at
22 the office of the counsel for the moving party. If both
23 counsel are not located in the same county in the Central
24 District, the conference may take place by telephone. The
25 moving party's letter shall identify the testimony, exhibits,
26 or other specific matters alleged to be inadmissible and/or
27 prejudicial, shall state briefly with respect to each such
28 matter the moving party's position (and provide any legal

1 authority which the moving party believes is dispositive),
2 and shall specify the terms of the order to be sought.

3 If counsel are unable to resolve their differences, they
4 shall prepare and file a separate, sequentially numbered
5 Joint Motion in Limine for each issue in dispute which
6 contains a clear caption which identifies the moving party
7 and the nature of the dispute (e.g., "Plaintiff's Motion in
8 limine #1 to exclude the testimony of Defendant's expert").
9 Each Joint Motion in Limine shall consist of one document
10 signed by all counsel. The Joint Motion in Limine shall
11 contain a clear identification of the testimony, exhibits, or
12 other specific matters alleged to be inadmissible and/or
13 prejudicial and a statement of the specific prejudice that
14 will be suffered by the moving party if the motion is not
15 granted. The identification of the matters in dispute shall
16 be followed by each party's contentions and each party's
17 memorandum of points and authorities. The title page of the
18 Joint Motion in Limine must state the Pre-Trial Conference
19 date, hearing date for the motions in limine, and Trial date.

20 Joint Motions in Limine made for the purpose of
21 precluding the mention or display of inadmissible and/or
22 prejudicial matter in the presence of the jury shall be
23 accompanied by a declaration that includes the following:
24 (1) a clear identification of the specific matter alleged to
25 be inadmissible and/or prejudicial; (2) a representation to
26 the Court that the subject of the motion in limine has been
27 discussed with opposing counsel, and that opposing counsel
28 has either indicated that such matter will be mentioned or

1 displayed in the presence of the jury before it is admitted
2 in evidence or that counsel has refused to stipulate that
3 such matter will not be mentioned or displayed in the
4 presence of the jury unless and until it is admitted in
5 evidence; and (3) a statement of the specific prejudice that
6 will be suffered by the moving party if the motion in limine
7 is not granted.

8 Unless ordered by the Court, no supplemental or separate
9 memorandum of points and authorities shall be filed by either
10 party in connection with any motion in limine.

11 The Court's courtesy copies of all evidence in support of
12 or in opposition to a motion in limine, including
13 declarations and exhibits to declarations, shall be submitted
14 in a separately bound volume and shall include a Table of
15 Contents. If the supporting evidence exceeds fifty pages,
16 each courtesy copy of the supporting evidence shall be placed
17 in a slant D-ring binder with each item of evidence separated
18 by a tab divider on the right side. All documents contained
19 in the binder must be three hole punched with the oversized
20 13/32" hole size, not the standard 9/32" hole size.

21 The Court will not consider any motion in limine in the
22 absence of a joint motion or a declaration from counsel for
23 the moving party establishing that opposing counsel: (a)
24 failed to confer in a timely manner; (b) failed to provide
25 the opposing party's portion of the joint motion in a timely
26 manner; or (c) refused to sign and return the joint motion
27 after the opposing party's portion was added.

28

1 Unless otherwise ordered by the Court, motions in limine
2 should be filed and will be heard on the dates specified on
3 the last page of this Order. Unless the Court in its
4 discretion otherwise allows, no motions in limine shall be
5 filed or heard on an ex parte basis, absent a showing of
6 irreparable injury or prejudice not attributable to the lack
7 of diligence of the moving party.

8 The failure of any counsel to comply with or cooperate in
9 the foregoing procedures will result in the imposition of
10 sanctions, including a resolution of the issue against the
11 party refusing to cooperate.

12 **6. PRE-TRIAL CONFERENCE AND LOCAL RULE 16 FILINGS**

13 **(a) General Provisions**

14 The Pre-Trial Conference ("PTC") will be held on the date
15 specified on the last page of this Order, unless the Court
16 expressly waived a PTC at the Scheduling Conference. If
17 adjustments in the Court's calendar to accommodate congestion
18 become necessary, the Court may re-schedule the PTC instead
19 of the trial date. Therefore, the parties should assume that
20 if the PTC goes forward, the trial will go forward without
21 continuance, although some brief period of trailing may prove
22 necessary.

23 The lead trial attorney on behalf of each party shall
24 attend both the PTC and all meetings of the parties in
25 preparation for the PTC, unless excused for good cause shown
26 in advance of the PTC.

27 A continuance of the PTC at the parties' request or by
28 stipulation is highly unlikely. **Specifically, failure to**

1 **complete discovery is not a ground for continuance.** In the
2 unlikely event that the Court agrees to continue the PTC, the
3 trial date is likely to be delayed as a result. If a change
4 in the trial date is necessitated or likely because of the
5 Court's calendar or otherwise, modifications of that date
6 will be discussed at the PTC.

7 At the PTC, the parties should be prepared to discuss
8 means of streamlining the trial, including, but not limited
9 to: bifurcation; presentation of foundational and non-
10 critical testimony and direct testimony by deposition
11 excerpts; narrative summaries and/or stipulations as to the
12 content of testimony; presentation of testimony on direct
13 examination by affidavit or by declaration subject to cross-
14 examination; and qualification of experts by admitted
15 resumes. The Court will also discuss settlement.

16 **(b) Form of Pre-Trial Conference Order ("PTCO")**

17 The proposed PTCO shall be submitted to the Court in
18 accordance with General Order 08-02 by the date specified on
19 the last page of this Order. Adherence to this time
20 requirement is necessary for in-chambers preparation of the
21 matter. The form of the proposed PTCO shall comply with
22 Appendix A to the Local Rules and the following:

23 (i) Place in "ALL CAPS" and in **bold** the separately
24 numbered headings for each category in the PTCO (e.g., "**1.**
25 **THE PARTIES**" or "**7. CLAIMS AND DEFENSES OF THE PARTIES**").

26 (ii) Include a Table of Contents at the beginning.

27 (iii) In specifying the surviving pleadings under
28 Section 1, state which claims or counterclaims have been

1 dismissed or abandoned (e.g., "Plaintiff's second cause of
2 action for breach of fiduciary duty has been dismissed.").
3 Also, in multiple party cases where not all claims or
4 counterclaims will be prosecuted against all remaining
5 parties on the other side, specify to which party each claim
6 or counterclaim is directed.

7 (iv) In drafting the PTCO, the Court expects that
8 the parties will attempt to agree on and set forth as many
9 uncontested facts as possible. A carefully drafted and
10 comprehensively stated stipulation of facts will assist the
11 Court in preparing for the Pre-Trial Conference.

12 **(v) In specifying the parties' claims and defenses**
13 **in Section 7 of the PTCO, each party shall closely follow the**
14 **examples set forth in Appendix A of the Local Rules.**

15 (vi) The Court may submit fact issues to the jury in
16 the form of findings on a special verdict. The issues of
17 fact should track the elements of a claim or defense on which
18 the jury will be required to make findings.

19 (vii) If expert witnesses are to be called at trial,
20 each party must list and identify its respective expert
21 witnesses, both retained and non-retained. Failure of a
22 party to list and identify an expert witness in the PTCO
23 shall preclude the party from calling that expert witness at
24 trial.

25 **(c) Rule 16 Filings; Memoranda; Witness Lists; Exhibit**
26 **Lists**

27 The parties must comply fully with the requirements of
28 Local Rule 16. They shall file carefully prepared Memoranda

1 of Contentions of Fact and Law (which may also serve as the
2 trial brief), along with their respective Witness Lists and
3 Exhibit Lists, all in accordance with the Local Rules. See
4 the last page of this Order for applicable dates.

5 **(d) Summary of Witness Testimony and Time Estimates**

6 Counsel shall prepare a list of their witnesses,
7 including a brief summary (two to three paragraphs) of each
8 witness's expected testimony, an estimate of the length of
9 time needed for direct examination, and whether the witness
10 will testify by deposition or in person. Counsel shall
11 exchange these lists with opposing counsel. **Counsel shall**
12 **jointly file a single list of witness testimony summaries,**
13 **including estimates for direct examination of their own**
14 **witnesses and estimates for cross-examination of opposing**
15 **witnesses.** The joint witness testimony summaries shall be
16 filed at the same time counsel submit the PTCO. If a party
17 intends to offer deposition testimony into evidence at trial,
18 the party shall comply with the Local Rules.

19 **(e) Pre-Trial Exhibit Stipulation**

20 The parties shall prepare a Pre-Trial Exhibit Stipulation
21 which shall contain each party's numbered list of all trial
22 exhibits, with objections, if any, to each exhibit including
23 the basis of the objection and the offering party's response.
24 All exhibits to which there is no objection shall be deemed
25 admitted. The parties shall also identify each witness they
26 anticipate will testify about and/or lay the foundation for
27 the exhibit. All parties shall stipulate to the authenticity

1 of exhibits whenever possible, and the Pre-Trial Exhibit
 2 Stipulation shall identify any exhibits for which
 3 authenticity has not been stipulated to and the specific
 4 reasons for the party's failure to stipulate.

5 The Stipulation shall be substantially in the following
 6 form:

7 Pre-Trial Exhibit Stipulation

8 Plaintiff(s)' Exhibits

9 Number Description Witness If Objection, State Grounds Response to Objection

10 Defendant(s)' Exhibits

11 Number Description Witness If Objection, State Grounds Response to Objection

12 The Pre-Trial Exhibit Stipulation shall be filed at the
 13 same time counsel submit the PTCO. Failure to comply with
 14 this paragraph shall constitute a waiver of all objections.

15 **DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE**
 16 **OPPOSING PARTY'S EXHIBITS. THESE WILL BE DISREGARDED AND**
 17 **OVERRULED.**

18 **(f) Jury Instructions, Verdict Forms, Special**
 19 **Interrogatories**

20 (i) Fourteen days before the required Local Rule
 21 meeting, the parties shall exchange proposed jury
 22 instructions, verdict forms, and special interrogatories.
 23 Seven days before the meeting, counsel shall exchange written
 24 objections, if any, to proposed jury instructions, verdict
 25 forms, and special interrogatories. At the required
 26 meeting, the parties shall confer with the objective of
 27 submitting one set of agreed upon substantive instructions, a
 28 verdict form, and, if necessary, special interrogatories.

1 "Substantive jury instructions" means all instructions
2 relating to the elements of all claims and defenses in the
3 case. Courtesy copies shall be provided to the Court in
4 accordance with Section 1 of this Order. **Counsel shall not**
5 **submit proposed preliminary instructions to be given to the**
6 **jury prior to opening statements. The Court will use its own**
7 **instructions which are patterned after the preliminary**
8 **instructions set forth in the Ninth Circuit Manual of Model**
9 **Jury Instructions (West Publishing, most recent edition).**

10 (ii) If the parties cannot agree upon one complete
11 set of substantive instructions, a verdict form, and/or
12 special interrogatories, they shall file two documents with
13 the Court: a joint document reflecting the agreed upon
14 instructions, verdict form, and/or special interrogatories;
15 and a second document in the form of a joint statement
16 regarding the disputed instructions, verdict form, and/or
17 special interrogatories in the following format for each
18 instruction, verdict form, and/or special interrogatories in
19 issue:

20 (a) A separate page containing the text of the
21 disputed language with an identification of the
22 party proposing it;

23 (b) Following the text of the disputed language, the
24 opposing party's statement of objections to the
25 disputed language along with legal authority in
26 support of the argument (not to exceed one page) and
27 proposed alternative language where appropriate; and
28

1 (c) The proposing party's response to the objection
2 with legal authority supporting the proposed
3 language, not to exceed one page.

4 Both the agreed upon set, and the joint statement re:
5 disputed instructions, verdict form, and/or special
6 interrogatories are to be filed with the Pre-Trial Conference
7 Order and other Local Rule 16 documents. Courtesy copies
8 shall be provided to the Court in accordance with Section 1
9 of this Order.

10 (iii) All proposed jury instructions shall be in the
11 format specified by the Local Rules. Additionally, each
12 proposed instruction, whether agreed upon or disputed, shall
13 reference the claim for relief to which it relates and shall
14 also cite to the PTCO. The Court will send a copy of the
15 instructions into the jury room for the jury's use during
16 deliberations. Accordingly, at the time the documents are
17 filed, the parties should e-mail a "clean set" of Joint
18 Proposed and/or Disputed Jury Instructions, containing only
19 the text of each instruction set forth in full on each page,
20 with the caption "Court's Instruction No. ____" (eliminating
21 titles, supporting authority, indication of party proposing,
22 etc.) to the Chambers' e-mail address: JFW_Chambers@cacd.
23 uscourts.gov.

24 **(iv) A Table of Contents shall be included with all**
25 **jury instructions (both the agreed upon set and the joint**
26 **statement re: disputed instructions) submitted to the Court.**

27 / / /

28 / / /

1 The Table of Contents shall set forth the following:

- 2 (a) The number of the instruction;
- 3 (b) A brief title of the instruction;
- 4 (c) The source of the instruction; and
- 5 (d) The page number of the instruction.

6 For example:

7 Number	Title	Source	Page Number
8 1	Burden of Proof	9th Cir. Manual of Model Jury Instr. 5.1	5

11 (v) The Court directs counsel to use the

12 instructions from the Ninth Circuit Manual of Model Jury

13 Instructions (West Publishing, most recent edition) where

14 applicable. Where California law is to be applied and the

15 above instructions are not applicable, the Court prefers

16 counsel to use the Judicial Council of California Civil Jury

17 Instructions ("CACI") (LexisNexis Matthew Bender, most recent

18 edition). If neither of these sources is applicable, counsel

19 are directed to use the instructions from O'Malley, Grenig

20 and Lee, Federal Jury Practice and Instructions (most recent

21 edition).

22 (vi) Modifications of instructions from the

23 foregoing sources (or any other form instructions) must

24 specifically state the modification made to the original form

25 instruction and the authority supporting the modification.

26 **Caveat: The failure of any counsel to comply with or**

27 **cooperate in all of the foregoing procedures regarding jury**

28 **instructions and/or verdict forms will constitute a waiver of**

1 all objections to the jury instructions and/or verdict form
2 used by the Court.

3 **(g) Real-Time Reporting Requirement**

4 Each party must file with the Court, at the same time
5 counsel submit the PTCO, a document for the Court Reporter
6 which contains proper names, unusual or scientific terms, or
7 any other foreign or uncommon words that are likely to be
8 used by the parties during the PTC and the Trial. Each party
9 shall also e-mail a copy of the document to the Chambers' e-
10 mail address (JFW_Chambers@cacd.uscourts.gov) at the time of
11 filing.

12 **(h) Joint Statement of the Case and Requests for Voir**

13 **Dire**

14 At the Pre-Trial Conference, the parties shall file their
15 proposed voir dire questions and their joint statement of the
16 case which the Court shall read to all prospective jurors
17 prior to the commencement of voir dire. The statement should
18 be not longer than two or three paragraphs.

19 The Court conducts voir dire of all prospective jurors.
20 The parties need not submit requests for standard voir dire
21 questions, such as education, current occupation, marital
22 status, prior jury service, etc., but should include only
23 proposed questions specifically tailored to the parties and
24 issues of the case.

25 **7. COURT TRIALS**

26 **(a) Declarations of Witness Direct Testimony**

27 Counsel in non-jury trials shall submit the direct
28 testimony of their witnesses in writing in a declaration

1 executed under penalty of perjury. These declarations shall
2 be in admissible form with appropriate foundation established
3 for the declarant's statements. Paragraphs in each
4 declaration shall be numbered consecutively to facilitate the
5 identification of paragraphs for evidentiary objections. Any
6 exhibits which are attached to a witness declaration shall be
7 numbered consistently with the number of the exhibit on the
8 Joint Exhibit List.

9 Counsel are to exchange and file these declarations at
10 least twelve calendar days before trial, unless otherwise
11 ordered by the Court. Courtesy copies shall be provided to
12 the Court in accordance with Section 1 of this Order.
13 Courtesy copies shall be submitted to the Court in a slant D-
14 ring binder with each declaration separated by a tab divider
15 on the right side. All documents must be three hole punched
16 with the oversized 13/32" hole size, not the standard 9/32"
17 hole size. The binders shall also contain a Table of
18 Contents listing the declarations contained therein.

19 Eight calendar days before trial, counsel may file
20 evidentiary objections to those declarations. Counsel shall
21 prepare a separate document for each declaration for which
22 they have an evidentiary objection in which they shall quote
23 the specific language from the declaration to which they
24 object, followed by the objection and any relevant argument.
25 Counsel shall file any reply or response to the objections by
26 noon on the fifth calendar day before trial. Courtesy copies
27 shall be provided to the Court in accordance with Section 1
28 of this Order. **DO NOT SUBMIT BLANKET OR BOILERPLATE**

1 **OBJECTIONS TO THE OPPOSING PARTY'S WITNESS DECLARATIONS.**

2 **THESE WILL BE DISREGARDED AND OVERRULED.**

3 At trial, the Court will rule on the evidentiary
4 objections and, depending upon the ruling, the declarations
5 will be received in evidence, either in whole or in part, or
6 rejected. Counsel will then conduct the cross-examination
7 and re-direct examination at trial.

8 Failure to comply with the literal terms of this Order
9 will result in sanctions or the Court may refuse to allow
10 that witness to testify.

11 **(b) Trial Briefs**

12 Counsel for each party shall file and serve a trial
13 brief, not to exceed 15 pages in length, fourteen calendar
14 days before trial.

15 **(c) Findings of Fact and Conclusions of Law**

16 Counsel for each party shall file and serve initial
17 proposed findings of fact and conclusions of law fourteen
18 calendar days before trial. Counsel for each party shall
19 also e-mail a copy of their proposed findings of fact and
20 conclusions of law to the Chambers' e-mail address
21 (JFW_Chambers@cacd.uscourts.gov) on the date due. Counsel
22 for each party shall then:

- 23 (1) Underline in red the portions which it disputes;
24 (2) Underline in blue the portions which it admits; and
25 (3) Underline in yellow the portions which it does not
26 dispute, but deems irrelevant.

27 / / /

28 / / /

1 Counsel may agree with a part of a finding or conclusion,
2 disagree with a part of it, and/or consider a part of it
3 irrelevant.

4 Two marked copies of opposing counsel's proposed findings
5 of fact and conclusions of law shall be filed with the Court
6 seven calendar days before trial and one marked copy shall be
7 served on opposing counsel. Courtesy copies shall be
8 provided to the Court in accordance with Section 1 of this
9 Order.

10 **8. SETTLEMENT**

11 This Court will not conduct settlement conferences in
12 non-jury cases which the Court will try unless counsel for
13 all parties and their respective clients agree either in
14 writing or on the record. In jury cases, the Court will
15 conduct a settlement conference at the parties' joint request
16 if three conditions exist:

17 (a) The parties are satisfied that the fact issues in
18 the case will be tried to a jury;

19 (b) All significant pre-trial rulings which the Court
20 must make have been made; and

21 (c) The parties desire the Court to conduct the
22 conference, understanding that if settlement fails, the Court
23 will preside over trial of the case.

24 The parties must file a Status Report re: Settlement at
25 the time they lodge the Proposed Pre-Trial Conference Order.
26 The Status Report shall include the name and phone number of
27 the Settlement Officer who assisted the parties with their
28 settlement conference.

1 Caveat: If counsel fail to file the required Pre-Trial
2 documents or fail to appear at the Pre-Trial Conference and
3 such failure is not otherwise satisfactorily explained to the
4 Court: (a) the cause shall stand dismissed for failure to
5 prosecute if such failure occurs on the part of the
6 plaintiff; (b) default judgment shall be entered if such
7 failure occurs on the part of the defendant; or (c) the Court
8 may take such action as it deems appropriate.

9
10
11 DATED: June 15, 2010



JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

**JUDGE JOHN F. WALTER
SCHEDULE OF TRIAL AND PRE-TRIAL DATES**

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial (jury) Estimated length: <u>7</u> days	8:30 am				5/24/11
[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions	10:00 am				5/13/11
[Court trial] Hearing on Motions in Limine	10:00 am				X
Pre-Trial Conference; File Proposed Voir Dire Qs and Agreed-to Statement of Case	10:00 am				5/6/11
Submit Pre-Trial Conf. Order; File Motions in Limine; Memo of Contentions of Fact and Law; Pre-Trial Exhibit Stipulation; Summary of Witness Testimony and Time Estimates; File Status Report re: Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.					4/21/11
Last day for hearing motions *	1:30 pm				3/28/11
Discovery cut-off					3/1/11

**ADDITIONAL MATTERS TO BE DETERMINED AT SCHEDULING
CONFERENCE**

Last day to conduct Settlement Conference					2/1/11
Last day to file Joint Report re: results of Settlement Conference					2/8/11

* Motions for class certification shall be filed in accordance with Local Rule 23-3.